

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Discrimination

State of Minnesota by Rebecca Lucero,
Commissioner of the Minnesota Department of
Human Rights,

Court File No. _____

Plaintiff,

SUMMONS

vs.

CSL Plasma, Inc.,

Defendant.

THIS SUMMONS IS DIRECTED TO: CSL PLASMA, INC.

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this summons a written response called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this summons located at: 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127.

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or

disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint. If you do not want to contest the claims stated in the complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. **ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: February 28, 2019

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

A handwritten signature in black ink, appearing to read 'J. Moler', is written over a horizontal line.

JONATHAN D. MOLER
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ATTORNEY FOR COMMISSIONER
REBECCA LUCERO, MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Discrimination

State of Minnesota by Rebecca Lucero,
Commissioner of the Minnesota Department of
Human Rights,

Court File No. _____

Plaintiff,

COMPLAINT

vs.

CSL Plasma, Inc.,

Defendant.

INTRODUCTION

This State of Minnesota, by Rebecca Lucero, Commissioner, Department of Human Rights, alleges that:

JURISDICTION AND VENUE

1. This Complaint is issued pursuant to Minn. Stat. § 363A.33, subd. 1 (2018).
2. The District Court Judge has jurisdiction over this matter pursuant to Minn. Stat. § 363A.33, subd. 6 (2018).
3. Venue is proper in Hennepin County pursuant to Minn. Stat. § 363A.33, subd. 6 because unlawful discriminatory practices discussed herein occurred in Hennepin County.

PARTIES

4. Complainant is the State of Minnesota by Rebecca Lucero, Commissioner of the Minnesota Department of Human Rights (“MDHR”). The Commissioner is authorized pursuant

to Minn. Stat. § 363A.33 to bring a civil action in Minnesota District Court to seek redress for an unfair discriminatory practice as defined by the Minnesota Human Rights Act.

5. Defendant CSL Plasma, Inc., which operates CSL Plasma locations at 106 West Superior Street, Duluth, MN 55802 and at 304 E. Lake St., Minneapolis, MN 55408, is registered as a foreign corporation under Minn. Stat. ch. 303. CSL Plasma's registered office address is located at 1010 Dale Street North, St. Paul, MN 55117.

6. CSL Plasma's Duluth and Minneapolis locations are places of public accommodation as defined by Minn. Stat. § 363A.03.

FACTUAL BACKGROUND

7. CSL Plasma runs plasma collection centers on behalf of its parent company and is regulated by the United States Food and Drug Administration ("FDA").

8. Around 2015, CSL Plasma compensated plasma donors approximately \$30 per donation.

9. Presently, CSL Plasma compensates regular plasma donors an average of \$40-\$50 per donation.

10. The FDA provided nonbinding guidance in 1992 suggesting that plasma collection companies screen out men and transgender persons who have had sex with other men once or more since 1977.

11. The 1992 guidance specified that transgender individuals may be at a higher risk not because of their transgender status, but because of risk factors the FDA identified at the time associated with being transgender. The guidance also explicitly stated that "The focus should be on behavior and not on stereotypes." The guidance suggested that collection agencies assess risk factors by questioning individuals about specific behaviors—such as biologically male

individuals having sex with other men—instead of refusing a donation from an individual based upon a stereotype.

12. The FDA provided guidance on who may donate plasma in the form of 21 C.F.R. § 640.63. 21 C.F.R. § 640.63 was revised as of May 23, 2016 by 80 F.R. 29905, May 22, 2015.

13. Alice James is a transgender woman.

14. James has never had sex with a man.

15. James began donating plasma at CSL Plasma’s Duluth location—usually two times per week—around March 2011. She did so without incident until June 28, 2015.

16. Although James identifies as female, CSL Plasma required her to identify as biologically male when she began donating plasma in 2011. In June 2015 she returned to self-identifying as a female.

17. On June 28, 2015, James was locked out of the CSL Plasma kiosk check in. She was informed by a CSL Plasma employee that CSL Plasma was indefinitely deferring transgender persons from donating plasma.

18. In December 2015 the FDA updated its guidance on donor suitability. In particular, it recommended allowing persons to self-report gender and screening out only men who have had sex with other men once or more in the past year.

19. On February 2, 2016, James filed a charge of discrimination with MDHR alleging that CSL Plasma discriminated against her based on her sexual orientation both in the context of business discrimination and public accommodation discrimination.

20. CSL Plasma, in its response to the charge of discrimination, acknowledged that it had a “flat ban on all transgender donors” despite the FDA guidance.

21. CSL Plasma claimed that, on March 23, 2016 it revised its policies to allow donors to self-identify their gender and accept donations from transgender persons who have not had sex with a man or engaged in other behaviors that it identifies as risk factors.

22. James moved to Minneapolis in October 2016 and currently resides there.

23. In October 2018 James went to CSL Plasma's Minneapolis location and was informed by a CSL Plasma employee that she continued to be permanently deferred and that should try to donate plasma at a vendor other than CSL.

24. Between June 25, 2016 and the present, James was deprived of at least \$60 per week of income based on CSL Plasma's refusal to allow her to donate plasma.

25. James suffered emotional distress because of CSL Plasma's actions.

26. MDHR staff conducted an investigation of James' charge.

27. On November 8, 2017, the Commissioner determined that probable cause existed to believe that discrimination had occurred.

28. CSL Plasma declined to participate in conciliation services offered by MDHR.

COUNT I

PUBLIC ACCOMMODATION DISCRIMINATION (MINN. STAT. § 363A.11)

29. The Commissioner re-alleges the foregoing paragraphs and incorporates those allegations by reference.

30. The Minnesota Human Rights Act ("MHRA") defines sexual orientation, in part, as "having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness." Minn. Stat. § 363A.03, subd. 44.

31. The charging party, as a transgender person who was born biologically male but identifies as female, is protected from discrimination based on her sexual orientation, as defined by the MHRA.

32. The MHRA defines a place of public accommodation as “a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public.” Minn. Stat. § 363A.03, subd. 34.

33. CSL Plasma opens its doors to all members of the public for the purpose of entering its premises to determine whether an individual is suitable for plasma donation or should be denied because of certain risk factors.

34. CSL Plasma does not limit the number of individuals with whom it can enter into a plasma-donor relationship.

35. CSL Plasma is a public accommodation covered by the requirements of the MHRA, Minn. Stat. § 363A.11.

36. CSL Plasma refused to allow James to donate plasma because she is transgender between June 28, 2015 and the present.

37. CSL Plasma discriminated against James in a place of public accommodation on the basis of her sexual orientation.

38. As a result of CSL Plasma’s actions, James suffered the harm described in this Complaint.

COUNT II

BUSINESS DISCRIMINATION (MINN. STAT. § 363A.17)

39. The Commissioner re-alleges the foregoing paragraphs and incorporates those allegations by reference.

40. It is an unfair discriminatory practice for a person engaged in business or in the provision of a service to intentionally refuse to do business with, or to refuse to contract with, a person because of that person's sexual orientation unless the alleged refusal or discrimination is because of a legitimate business purpose.

41. CSL Plasma does business with plasma donors within the meaning of the MHRA because it pays donors for their time spent in the donation process and receives plasma in exchange.

42. CSL Plasma explicitly refused to do business with James because of her sexual orientation between June 28, 2015 and the present. This deprived her of a regular source of income.

43. Between June 28, 2015 and the present federal regulations did not forbid transgender persons from donating plasma but did single out at-risk behaviors.

44. CSL Plasma did not identify any behaviors James engaged in which would constitute a legitimate business purpose for refusing to do business with her.

45. CSL Plasma discriminated against James in the business context on the basis of her sexual orientation.

46. As a result of CSL Plasma's actions, James suffered the harm described in this Complaint.

RELIEF

The District Court has the authority to issue any relief authorized by Minn. Stat. § 363A.33. The Commissioner, therefore, prays that the Court issues its findings of fact and conclusions of law and grant the following relief:

1. Enter an order, pursuant to Minn. Stat. § 363A.29, subd. 3, finding that CSL Plasma violated Minn. Stat. § 363A.11.
2. Enter an order requiring CSL Plasma to compensate James in an amount up to three times the actual damages sustained as well as damages for mental anguish and suffering, pursuant to Minn. Stat. § 363A.29, subd. 4.
3. Enter an order requiring CSL Plasma to pay a civil penalty to the State, pursuant to Minn. Stat. § 363A.29, subd. 4.
4. Enter an order requiring CSL Plasma employees to undergo training on sexual orientation discrimination that is approved by the Department, pursuant to Minn. Stat. § 363A.29, subd. 3.
5. Enter an order pursuant to Minn. Stat. § 363A.29, subd. 3 requiring CSL Plasma to submit reports at least quarterly regarding its deferral at its Minnesota locations of transgender plasma donors or donors who it believes to be transgender.
6. Enter an order requiring CSL Plasma reimburse the Commissioner and the Minnesota Attorney General's Office for all appropriate investigation, litigation, and hearing costs expended in preparing for and conducting the hearing pursuant to Minn. Stat. § 363A.33, subd. 7.

Dated: February 28, 2019

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota



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REBECCA LUCERO, MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

MINN. STAT. § 549.211

ACKNOWLEDGMENT

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211 (2012).

Dated: February 28, 2019

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota



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